



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 5, 2015

Tod Hickman
PO Box 238
Bangor, CA 95914

Re: Your Request for Advice
Our File No. A-15-061

Dear Mr. Hickman:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ We are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. We also do not advise regarding past conduct; the advice below relates only to upcoming decisions.

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

QUESTION

Do you have a conflict of interest that prevents you from participating in decisions regarding a water project in your neighborhood, or in other similar projects that the Water District considers?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSION

You have a conflict of interest in the decisions relating to the water project in your own neighborhood, but you do not have a conflict of interest in projects in other areas, in which you do not have a financial interest, provided they do not relate back to your neighborhood.

FACTS

You are one of five elected Directors for South Feather Water and Power, a small water and power Agency in Northern California.

You own three properties (as an individual or through an LLC) in a neighborhood that has 30-78 properties that are mostly between five and thirty acres (the "Neighborhood"). Your properties are between 8 and 15 acres. A small amount of properties in the Neighborhood might have more than 100 acres. Many property owners in the Neighborhood would like to have irrigation water (non-treated, raw water) supplied to the Neighborhood. To do this, they must submit a petition signed by a 2/3 majority of property owners to the Water District to request the water service. After that, the Water District will vote to initiate a formal engineering and cost analysis. Then the property owners will vote whether they want to undertake the project (as they will bear the cost).

If the property owners vote 'yes' to develop this special district, then the Board will vote to direct the Agency to move forward with the project. If the property owners vote 'yes' and the Board responds with a 'no' vote, then the Water District is vulnerable to litigation. You have stated that because the property owners in the Neighborhood are 100 percent responsible for the cost of building and connecting the water supply, the Board would not have grounds to vote against the project. You estimate the cost per property owner would be approximately \$20,000.

Your share of the costs will be the same as every other property owner in the Neighborhood (allocated by acres-owned). You have stated that subdividing your properties, with or without this project is not viable. Your neighbors have developed a coalition of property owners to push project forward and obtain Water District approval.

Because the Water District discusses projects like these during its meetings as well as the Neighborhood project itself, you are faced with whether you can discuss similar water projects in general and this project in particular. You will also be faced with a vote on the Neighborhood project.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a decision within the meaning of the Act if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests. (Section 87103.) You have a financial interest in the

properties you own in the Neighborhood as well as in your personal finances. (Section 87103(b) and Regulation 18702.5(a).)

Reasonably foreseeable

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) Because your properties are in the Neighborhood and will be the subject of the decision, it is reasonably foreseeable that there will be a financial effect.

Regarding other water projects outside but similar to one in the Neighborhood, your properties or personal finances are not explicitly involved, nor do they meet the factors for financial effects that are not explicitly involved. (See Regulation 18701(b), copy enclosed.) Because the property owners must bear 100% of the cost for these water projects, we cannot see that the decisions would have an impact on your property as they would if, for example, the Water District's budget were impacted by each project (money for other projects would mean less money for the Neighborhood). There is no conflict of interest under the Act for you to discuss the other water projects or policies in the Water District.

Materiality

The reasonably foreseeable financial effect on real property is material if, among other situations, it involves:

“construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel in which the official has an interest will receive new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties in the official's jurisdiction or where the official will otherwise receive a disproportionate benefit or detriment by the decision . . .”

(Regulation 18702.2(a)(6).) While the entire Neighborhood would be receiving the benefits of the projects, the impact on this small subset of the Water District is great and the benefit is disproportionate to a majority of similarly situated properties.

Additionally, the reasonably foreseeable financial effect on a public official's personal finances is material if “the official or the official's immediate family member will receive a measurable financial benefit or loss from the decision.” (Regulation 18702.5(a).) The project will cost each property owner in the Neighborhood approximately \$20,000, which is a “measurable benefit or loss.”

Public Generally

A public official may not have a prohibitive conflict of interest in a decision if he or she can establish that “a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment.” (Regulation 18703.) Under this regulation, a significant segment of the public is 25 percent of:

- (1) All businesses or non-profit entities within the official’s jurisdiction;
- (2) All real property, commercial real property, or residential real property within the official’s jurisdiction; or
- (3) All individuals within the official’s jurisdiction.

Because the Neighborhood is a relatively small section of the entire water district, the public generally exception does not apply. You therefore may not make, participate in making, or otherwise influence decisions relating to the project in your Neighborhood, but you may participate in discussions that involve other similar water projects in the Water District if the discussion would not influence the decisions regarding the Neighborhood.

Exceptions to influencing a decision

An official “attempts to use his or her official position to influence a decision” if “the official contacts, or appears before, or otherwise attempts to influence any member, officer, employee or consultant of the agency.” (Regulation 18704.3.)

Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to the official’s personal interests do not qualify as making, participating, or using one’s official position to influence a decision. (Regulation 18704.4(a)(2).) An official’s “personal interests” include an interest in real property wholly owned by the official or members of his or her immediate family.

Method of Recusal

When a public official who holds an office specified in Section 87200 (including county supervisors) has a conflict of interest in a decision noticed at a public meeting, he or she must: (1) immediately prior to the discussion of the item, orally identify each type of interest involved in the decision as well as details of the interest, on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

/S/

By: Heather M. Rowan
Senior Counsel, Legal Division

HMR:jgl